



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,387	12/17/2001	Albert Philip Van Duren	AUGA22000007	4111

25548 7590 05/08/2003

TERRANCE A. MEADOR
GRAY CARY WARE & FREIDENRICH, LLP
4365 EXECUTIVE DRIVE
SUITE 1100
SAN DIEGO, CA 92121-2133

EXAMINER

RAM, JOCELYN DEBRA

ART UNIT	PAPER NUMBER
----------	--------------

3739

DATE MAILED: 05/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/024,387

Applicant(s)

VAN DUREN ET AL.

Examiner

Jocelyn D Ram

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 77-94 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 77, 78 and 84-94 is/are rejected.
- 7) ☒ Claim(s) 79-83 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

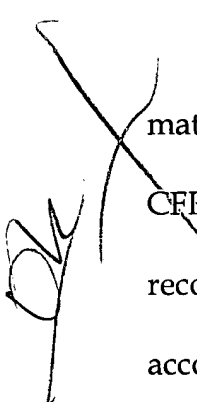
Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,5.
- ☐ Interview Summary (PTO-413) Paper No(s). _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other:


DETAILED ACTION

Specification

A substitute specification excluding the claims is required pursuant to 37 CFR 1.125(a) because the number of amendments is excessive to enter.

 A substitute specification filed under 37 CFR 1.125(a) must only contain subject matter from the original specification and any previously entered amendment under 37 CFR 1.121. If the substitute specification contains additional subject matter not of record, the substitute specification must be filed under 37 CFR 1.125(b) and must be accompanied by: 1) a statement that the substitute specification contains no new matter; and 2) a marked-up copy showing the amendments to be made via the substitute specification relative to the specification at the time the substitute specification is filed.

Double Patenting

 A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claim 1 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of prior U.S. Patent No. 6,447,538. This is a double patenting rejection.

Claim Objections

Claim 85 is objected to because of the following informalities: line 1, "he" should be changed to -the-. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

OK
Claims 84-94 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 84 recites the limitation "an end" in line 3. Since "two ends" are previously recited in line 2, it is unclear if this "end" is one of the aforementioned ends or a new one. It is suggested that consistent terminology be used. Thus, "an end" should be changed to -one of said two ends-. Claims 85-94 are necessarily rejected for being dependent on a rejected base claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 77, 78, 84 and 85 are rejected under 35 U.S.C. 102(e) as being anticipated by Kocurek (6,493,889). Kocurek shows a method and a combination for controlling airflow between an air hose (20) and an inflatable thermal device (12), comprising: at least one inlet port (46, 48) in the inflatable thermal device for being coupled with an end of the air hose (20); and a mechanism (diverter 44) disposed in the air hose near the end for opening to enable airflow out of the end when the end is coupled with the inlet port (col 7, lines 1-19), and the mechanism (44) cooperates with the inlet port (46, 48) independently of the rotational alignment of the end of the inlet port.

Claims 77 and 78 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaufmann et al. (5,318,568). Kaufmann shows a combination for controlling airflow between an air hose (400) and an inflatable thermal device (10), comprising: at least one

inlet port (110) in the inflatable thermal device (10) for being coupled with an end of the air hose (400); and a mechanism (220) disposed in the air hose near the end for opening to enable airflow out of the end when the end is coupled with the inlet port (col 3, lines 48-49), and the mechanism (220) cooperates with the inlet port (110) independently of the rotational alignment of the end of the inlet port.

Allowable Subject Matter

Claims 79-83 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 86-94 would be allowable if rewritten to overcome the rejection under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

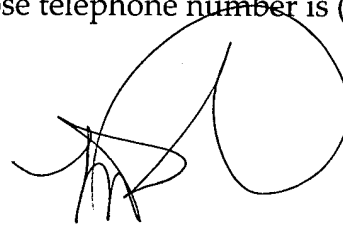
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Van Duren (5,693,079) shows an apparatus for simulating an inflatable blanket to test an air source. Shigezawa et al. (6,143,020) shows a connector for a thermal blanket which includes temperature sensors.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jocelyn D Ram whose telephone number is (703) 308-6392. The examiner can normally be reached on Mon-Fri, 10-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C Dvorak can be reached on (703) 308-0994. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

A handwritten signature in black ink, appearing to be 'LD' with a large loop and a crossbar, positioned above the printed name.

LINDA C. M. DVORAK
SUPERVISORY PATENT EXAMINER
GROUP 3700

JR
April 24, 2003